

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES**

In Re: The Revocation of the License of
Dennis and Merlene Henry
2643 Morgan Avenue North
Minneapolis, Minnesota 55411-1841

ORDER

The Minnesota Department of Human Services (the Department) and Hennepin County (the County) began this contested case proceeding by issuing a Notice of and Order for Hearing on April 25, 2000. The notice scheduled a hearing in this matter for Tuesday, July 18, 2000, at the Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota. On June 21, 2000, the County filed a motion *in limine* requesting the Administrative Law Judge to make three rulings prior to the hearing, namely: (1) to limit the scope of the hearing to what the law prescribes in Minnesota Statutes, Section 245A.04, subdivision 3b(e);^[1] (2) to find that the Commissioner of Human Services established reasonable cause to support revocation of the child foster care license of Dennis and Merlene Henry; and (3) to rule that Mr. and Mrs. Henry bear the burden of demonstrating that they were in full compliance with the statutes and rules that govern the child foster care program. On June 27, 2000, Mr. and Mrs. Henry filed a response to the County's motion requesting that the Administrative Law Judge review the merits of the charges of child maltreatment that prompted the Department and the County to seek revocation of their child foster care license.

This matter is, therefore, before the undersigned Administrative Law Judge for a decision on the County's motion. Vicki Vial-Taylor, Assistant Hennepin County Attorney, 12th floor, 525 Portland Avenue, Minneapolis, Minnesota 55415, represents the Department and the County on this motion. Dennis and Merlene Henry, 2643 Morgan Avenue North, Minneapolis, Minnesota 55411, are representing themselves.

Based upon the record in this proceeding, IT IS HEREBY ORDERED that the County's Motion *in limine* is GRANTED, in part, and DENIED, in part, to the extent described in the accompanying Memorandum, which is incorporated into this Order by reference.

Dated this 11th day of July, 2000.

BRUCE H. JOHNSON
Administrative Law Judge

MEMORANDUM

The Administrative Law Judge Lacks Authority to Review the Commissioner's Decision About Maltreatment

Minnesota law^[2] requires the Department to disqualify any person who has been determined administratively to have maltreated a child from having any further direct contact with foster children.^[3] And under child foster care program rules, disqualification of the licensee is grounds for revoking his or her license.^[4]

On August 18, 1999, the Department notified Mr. and Mrs. Henry they were being disqualified from direct contact with foster children.^[5] The reason that the Department gave for disqualifying them was that the County had found that Mrs. Henry had been responsible for serious or recurring maltreatment of a foster child under her care that imminently and seriously endangered the child's health or welfare. Minnesota law provides a licensee with the opportunity for a separate hearing on whether any maltreatment actually did occur before one of the Department's appeals referees. Mr. and Mrs. Henry did pursue that other appeal of the County's maltreatment finding, and both the appeals referee and the Commissioner ruled against them. Nevertheless, they continue to insist that child maltreatment never occurred.

The legislature effectively limited appeals of child maltreatment determinations to the process that Mr. and Mrs. Henry have already pursued when it enacted Minnesota Statutes, section 245A.04, subdivision 3b(e), which provides:

Except as provided in subdivision 3c, the commissioner's decision to disqualify an individual, including the decision to grant or deny a rescission or set aside a disqualification under this section, is the final administrative agency action and *shall not be subject to further review in a contested case under chapter 14 involving a negative licensing appeal taken in response to the disqualification* or involving an accuracy and completeness appeal under section 13.04. [Emphasis supplied.]

In other words, the legislature has specifically prohibited an administrative law judge from reviewing or making a recommendation about a maltreatment determination that the Commissioner has already made. Even though Mr. and Mrs. Henry's right to have that decision reconsidered or to appeal it has already been exhausted, they still argue that both the appeals referee and the Commissioner were wrong about what actually happened. But under Minnesota law, this Administrative Law Judge is bound by the Commissioner's earlier decision, and the law does not allow him to hear evidence and come to a different conclusion. Since any evidence to the contrary does not relate to an issue that the Administrative Law Judge has the legal authority to decide here, he is obliged to grant the County's motion to limit the issues.

Whether the Department Has Established Reasonable Cause to Support Revocation Is Still at Issue

Minnesota law^[6] requires DHS to disqualify any person who has been determined administratively to have maltreated a child from having any further direct contact with foster children.^[7] And under child foster care program rules, disqualification of the licensee is grounds for revoking his or her license.^[8] So the County has also asked the Administrative Law Judge to find that the Commissioner of Human Services established reasonable cause to support revocation of Mr. and Mrs. Henry's child foster care license. The Administrative Law Judge notes that since the underlying maltreatment finding is unreviewable here, the establishment of reasonable cause to support revocation seems almost inevitable. But this particular request of the County is in the nature of a motion for summary disposition and not in the nature of a motion *in limine*. Mr. and Mrs. Henry are not represented by an attorney and may not have clearly understood that the County was seeking a ruling on the merits of their appeal without going forward with a hearing on the issues. Although the Henrys did address the merits to some extent in their response to the County's motion, neither party has directly addressed, for example, the question of whether any genuine issues of material fact exist for adjudication. The Administrative Law Judge must therefore deny this part of the County's motion. But the Administrative Law Judge is directing both parties to be prepared to discuss at the outset of the hearing what, if any, issues of fact remain that will require presentation of evidence.

Mr. and Mrs. Henry Do Have the Burden of Proof in this Proceeding

Minnesota law^[9] establishes the parties' burdens of proof and of producing evidence in proceedings to appeal revocations of family foster care licenses:

[T]he commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the commissioner demonstrates that reasonable cause existed, the burden of proof in hearings . . . shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with those laws or rules that the commissioner alleges the license holder violated, at the time that the commissioner alleges the violations of law or rules occurred.

In other words, Mr. and Mrs. Henry bear the burden to demonstrate by a preponderance of the evidence that they were in full compliance with all child foster care licensing statutes and rule. The Administrative Law Judge therefore also grants the third part of the County's motion.

B. H. J.

^[1] Unless otherwise specified, all references to Minnesota Statutes are to the 2000 edition.

- ^[2] Minnesota Statutes, section 245A.04, subdivision 3d.
- ^[3] Minnesota Statutes, section 245A.04, subdivision 3(f).
- ^[4] Minnesota Rules, part 9543.1060, subpart 4B.
- ^[5] Attachments 2 and 3 to the Affidavit of Vicki Vial-Taylor, dated June 21, 2000 (Vial-Taylor Affidavit).
- ^[6] Minnesota Statutes, section 245A.04, subdivision 3d.
- ^[7] Minnesota Statutes, section 245A.04, subdivision 3(f).
- ^[8] Minnesota Rules, part 9543.1060, subpart 4B.
- ^[9] Minnesota Statutes, section 245A.08, subdivision 3(a).